

**MINUTES**  
**ENVIRONMENTAL REVIEW COMMISSION**  
**November 15, 2012**

The Environmental Review Commission (ERC or Commission) met on Thursday, November 15, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided.

The following members were present: Chair, Representative Mitch Gillespie Co-Chair, Representative Ruth Samuelson, Senator Fletcher Hartsell, Senator Brent Jackson, Representative William Brisson, Representative Carolyn Justice and Representative Chuck McGrady. Mr. Jeff Hudson, Commission Counsel, Ms. Jennifer Mundt, and Ms. Jennifer McGinnis, Commission Analyst, Ms. Mariah Matheson, Research Assistant, Mr. Peter Ledford, Attorney and Mr. Jeff Cherry, Bill Drafting Attorney; and Ms. Sarah Neunzig, Commission Clerk, Sargent-at-Arms. Attachment #1 and #2.

On October 29, 2012 and November 8, 2012, notices was sent to members and interested parties via e-mail. Copies of the notices are included in the attachments to these minutes as Attachment#3 and #4. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as Attachment #5 and Attachment #6, respectively.

**Call to order and introductory remarks**

Representative Gillespie called the meeting to order and welcomed members, staff, and visitors in attendance. He recognized Ms. Robin Smith from DENR and her planned retirement. She gave a few words and was recognized by the members and visitors.

Representative Gillespie then recognized his Co-Chair, Representative Samuelson, for introductory remarks. He then recognized Mr. Jeff Hudson, Commission Counsel, to provide an overview of the meeting agenda. Mr. Hudson reviewed the agenda: Development and prioritization of the State's impaired waters, Determinations for development of hydrologic models of ecological flow, Uranium mining in Virginia and its potential impacts on North Carolina, Update on the L&S Hydro v Piedmont Triad Regional Water Authority litigation, and the annual report on the Inactive Hazardous Sites Program.

Representative Gillespie then asked if there were any questions and seeing none he proceeded.

**Presentation on development on prioritization of the State's list of impaired waters**

Representative Gillespie recognized Mr. Chuck Wakild, Director of the Division of Water Quality, Department of Environment and Natural Resources (DENR). He gave a basic explanation through the use of his PowerPoint presentation of the "303(d) List" Process. A copy of the presentation is included in the attachments to these minutes as Attachment #7. Mr. Wakild asked if members had questions.

Representative Samuelson asked about municipal water quality standards and their relation to the state's standards. Mr. Wakild responded that the results reported to the EPA are based on the state standards, regardless of any additional or different municipal standards.

Representative Samuelson asked a follow-up question if there are any municipalities or counties that have more strict water quality standards than the state standards. Mr. Wakild responded that to his knowledge there are none stricter than the state's regulations. The qualifications in obtaining a permit are based on state standards, not municipal or county.

Representative Justice mentioned the 35 sampling sites along the Cape Fear River that are maintained through University of North Carolina at Wilmington (UNCW) and wanted to know if the data from those sites are included in his data. Mr. Wakild responded that these sites' information is included in this evaluation process.

Representative Justice followed up by explaining that some of these sites were started by a combination of local government support and private industry funding. The data found by these private industries might help us identify potential future industry along our rivers without harm to our water quality.

Representative Gillespie asked the result of the vote on the changes to the 303(d) list process from EMC. Mr. Wakild stated he believed it was a unanimous vote, but he will follow up with confirmation.

Representative Samuelson asked whom are the interested parties and how does the agency know if they are reviewing and commenting on the processes. Mr. Wakild stated that the most interested parties are people with permits, with a general concern about water quality, environmentalists and municipalities. The most interested parties have been utilities and local governments. These parties are kept abreast of their information via list serves and public notices on their website.

Representative Brisson asked how the state maintains the data from the large number of sites across the state. Mr. Wakild explained there is an ambient network across the state, where several hundred sites are visited by a DWQ person once a month. Other sites are visited once a year and some every five years. The frequency of visits is dependent upon the parameters which the Division is looking into or researching. He also explained that some private industries are taking their wastewater discharge and sending their samples to a private lab or do it in house at their own cost. They will then send this data to the agency for additional data collection. Other entities that do their own research also contribute to the state's data such as universities, other agencies, and the US Geological Survey. When the data is presented to the public it is shown in five year slices including the data from each of these sources across the state.

Representative Brisson followed-up by asking if all bodies of water are governed by the federal guidelines and if the state exceeds these guidelines. Mr. Wakild explained the federal Clean Water Act was established and allowed each state to create its own guidelines. North Carolina did that and our standards were approved by the EPA.

Senator Hartsell asked what verification DENR has used to state "NO" as the response to the question if any state land is involved in the Yadkin River. He asked Mr. Wakild to provide the Commission some verification how DENR has proved that this is not state-owned land.

Senator Jackson asked how to compare the state's guidelines with the neighboring states to North Carolina. Mr. Wakild responded that in the major areas they are similar and easily comparable. He will provide a copy of that information to all Commission members.

### **Presentation on ecological flow determinations for development of hydrologic models**

Representative Gillespie recognized Mr. Thomas Reeder, Director of the Division of Water Resources, DENR to speak on ecological flows and their multiple uses throughout the state. The PowerPoint presentation is included as Attachments #8 and #9 respectively.

Representative Gillespie asked Mr. Reeder to discuss the Science Advisory Board meetings and is there time and opportunity for public. Mr. Reeder stated that they are publicly streamed on website and are kept for the public.

Representative Gillespie asked when grants are given for water supply and if points are given to these facilities. Mr. Reeder responded that yes, priority points are given.

Senator Hartsell asked what the percentage of use is in a typical municipal system. Mr. Reeder responded that there are some systems in NC that draw water and then go to a septic system, which is 100% water loss. The average typical municipal system with sewer system returns around 60% of the water into the sewer system. This percentage will vary from city to city; the agency is routinely communicating and collecting data regarding water loss. If we find a certain city is losing more than normal, the agency will assist with that municipality.

Representative Justice asked what the priority points do and their purpose. Mr. Reeder responded that there is an application for the Drinking Water Assistance Program, and there are routinely more requests than money available. So priority points are assigned to aid in the ranking system to determine which get assistance and have a higher need than others.

Representative McGrady asked if part of the problem of water loss in the mountain area is due to the topography. Mr. Reeder agreed and said topography contributed to water loss. He also stated there are multiple small towns in the mountains that have old infrastructure which contributes to water loss due to their water leaks. Yes, it is contributing to their water loss. Lots of old infrastructure and water leaks without funds to fix and causing large amounts of water loss. The pressure changes and hills contribute to loss too.

### **Uranium mining in Virginia and its potential impact on North Carolina**

Representative Gillespie recognized Mr. Thomas Reeder, Director of the Division of Water Resources, DENR. Mr. Reeder addressed the location of the mining in Virginia, the current mining ban in Virginia, and North Carolina's actions to date, Attachment #10.

Representative Gillespie asked if this information has been included in the transition documents to the new governor and General Assembly members. Ms. Robin Smith commented and said she cannot remember if this was included, if she finds that it was not, she will be sure to send a separate document to highlight the importance of this issue.

Representative Samuelson asked if Mr. Reeder can send his report to the incoming congressional delegation so they can meet with the delegation from Virginia. She then posed a question to Chair Gillespie if the Commission can help in recommending something to the 2013 General Assembly members and the governor.

Representative Gillespie directed staff to prepare a letter to send to the State's Congressional delegation and a joint resolution to consider for recommendation to the 2013 Session of the General Assembly to oppose lifting the current ban on uranium mining.

### **Report on the L&S Hydro v Piedmont Triad Regional Water Authority**

Representative Gillespie introduced Mr. Richard Whisnant, Associate Professor of Public Law and Government from the School of Government at the University of North Carolina at Chapel Hill. His remarks are included in the minutes as Attachment #11.

Representative Samuelson asked about permitting for large water users and if he can clarify how this works. Mr. Whisnant explained that some permit the withdrawer of water and some permit the user of the water. Every state looks at it differently and some do it both ways. The user that pulls the water from the stream, whether it a municipality or not, is responsible for the water use, the example given was the City of Charlotte.

Representative McGrady questioned the legal theory of eminent domain for water rights. Mr. Whisnant gave his opinion that the Court of Appeals looked at the laws from the 1970s and saw that they treat the parties of eminent domain differently in relation to property rights. He feels they want to spread the cost over everybody upstream for the one that is injured downstream.

### **Annual Report on the Inactive Hazardous Sites Program**

Representative Gillespie introduced Mr. Dexter Matthews, Director of the Division of Water Management in DENR. Mr. Matthews gave his overview of the program and some recommendations and highlighting a site outside Wake Forest that is a good example of what they are dealing with across the state. His presentation is included in the minutes as Attachment #12, #13 and #14.

Ms. Jennifer McGinnis asked if Mr. Matthews would provide the staff with his recommendations.

Representative Justice questioned the increase in money to extend the water lines and if it would benefit others in the community or is the benefit confined to the one house that was improved. Mr. Matthews responded that water lines can be extended and neighbors can benefit from extension of lines.

Representative Samuelson asked about the changes and amounts of the Bernard Allen Fund. If the legislature changed the amounts and it decreases the number, what impact would that have on the success of the Fund and if there should be a concern about abuse of the program, which would then cause them to legislate limits? Mr. Matthews suggests that there should be a level that is allowed per household. The change would allow his agency to spend more on isolated instances where more remote wells are located. He assured the Commission that the funds are all being used every year and there are many sites, and that some high risk sites that are not being visited due to funding limitations.

Representative Samuelson, follow-up question concerning recent legislation which stated a risk based cleaned up should be implemented, did this legislation help. Mr. Matthews responded that it has not helped this program directly.

Representative Samuelson, follow-up, regarding a constituent complaint about continual paperwork after they received a 'no further action' notice. Mr. Matthews will look into it specifically, the only way it would continue is if there are land use restrictions in place on the property.

**Disposition of Reports,** Attachment #15

**Commission discussion and announcements**

Representative Gillespie thanked the members and staff, and announced the next meeting to be held in December, the specific date to be sent to the Commission members when final. Recommendations from the ERC on how the General Assembly will move forward during the next session. The Chair requested members are to bring their recommendations or deletions to the December meeting for their input.

**Adjournment**

Representative Gillespie adjourned the meeting at 12:25PM.

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Chair Representative Mitch Gillespie

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Co-Chair Senator David Rouzer

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Co-Chair Representative Ruth Samuelson

Attest:

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Cindy Hobbs, Committee Clerk